

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Natural Gas Pipeline Negotiated Rate
Policies and Practices

Docket No. PL02-6-003

ORDER DISMISSING REHEARING REQUESTS AND DENYING REQUESTS FOR
CLARIFICATION

(Issued March 23, 2006)

1. A number of parties¹ have filed requests for rehearing and or clarification of the Commission's January 19, 2006 Order in the captioned docket.² The Commission's January 19, 2006 Order modified Commission policy to again permit pipelines to use basis differential pricing in negotiated rate transactions.³ The Commission permitted pipelines to use basis differential pricing in negotiated rates until July 2003 when it issued a policy statement revising its negotiated rate policies to no longer permit the use of basis differential pricing. The January 19, 2006 Order thus represented a return to the Commission's pre-July 2003 negotiated rate policies on this issue.

2. The Commission dismisses the requests for rehearing of its January 19, 2006 Order. Section 19 (a) of the Natural Gas Act (NGA) provides for parties to request

¹ Pacific Gas and Electric Company (PG&E) requests clarification or in the alternative, rehearing, of the Commission's order. BP America Production Company and BP Energy Company (BP America) request rehearing and/or clarification of the Commission's order, and the Natural Gas Supply Association (NGSA) and the American Gas Association (AGA) request clarification of the Commission's order.

² *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 114 FERC ¶ 61,042 (2006).

³ *Natural Gas Pipeline Negotiated Rates Policies and Practices*, 104 FERC ¶ 61,134 (2003).

rehearing only when they are aggrieved by a Commission order.⁴ This revised policy statement is not a final action of the Commission but an expression of policy intent. As the U.S. Court of Appeals for the District of Columbia Circuit has held, a statement of policy “is not finally determinative of the issues or rights to which it is addressed”; rather, it only “announces the agency’s tentative intentions for the future.”⁵ Therefore, the parties are not aggrieved by the revised policy statement, and rehearing does not lie.⁶ The Commission accordingly dismisses the requests for rehearing.⁷ To implement any negotiated rate contract, a pipeline must file either the negotiated contract itself or a tariff sheet describing the essential elements of the negotiated rate contract.⁸ Therefore, if any pipeline chooses to enter into a negotiated rate agreement with a shipper, it will have to file that agreement with the Commission. At that time, parties may raise any concerns with the pipeline’s use of basis differential pricing in negotiated rate agreements.

3. Further, although several parties request the Commission to clarify its Policy Statement to address the use of basis differential pricing for capacity release transactions, such requests are beyond the scope of this proceeding.

⁴ Section 19 of the Natural Gas Act states in part:

Any person, State, municipality, or State Commission *aggrieved by an order* issued by the Commission in a proceeding under this act to which such person, State, municipality, or State Commission is a party may apply for a rehearing within thirty days after issuance of such order. 717r U.S.C. (2000). *emphasis added*.

⁵ *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974).

⁶ Rule 713 (a) of the Commission’s regulations regarding the applicability of a request for rehearing to a Commission determination provides that:

This section applies to any request for rehearing of *a final Commission decision or other final order*, if rehearing is provided for by statute, rule, or order. 18 CFR §385.713 (2005). (*emphasis added*).

⁷ *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶ 61,024 at 61,076, *citing, American Gas Association v. FERC*, 888 F.2d 136 (1989); *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295 (1985), *order on reh’g*, 48 FERC ¶ 61,122 at 61,442 (1989).

⁸ 104 FERC ¶ 61,134 at P 25-27.

4. The Commission established its negotiated rate program to give additional rate flexibility to pipelines that cannot show they lack market power. The Commission determined that any potential exercise of market power by such pipelines would be constrained by the fact that pipelines must sell any available capacity to shippers offering the maximum just and reasonable recourse rate.⁹ As the Commission explained in the original negotiated rate policy statement, “The availability of a recourse service would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service.”¹⁰ As currently structured, the Commission's capacity release program contains no requirement that releasing shippers must release their unused firm capacity to replacement shippers offering the maximum just and reasonable rate. Therefore, the considerations underlying capacity release transactions differ from those underlying the negotiated rate policies for pipelines and are beyond the scope of this proceeding. Accordingly, the Commission will not consider changes in its capacity release policies in this proceeding.

The Commission orders:

(A) The requests for rehearing of the Commission's January 19, 2006 Order in the captioned docket are dismissed.

(B) The requests for clarification of the Commission's January 19, 2006 Order in the captioned docket are denied.

By the Commission. Commissioner Brownell concurring with a
separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ See *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,053 (2000), *order on reh'g*, 94 FERC ¶ 61,097 (2001), *aff'd*, *Process Gas Consumers Group v. FERC*, 292 F.3rd 831 (D.C. Cir. 2002).

¹⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,194 at 61,240 (1996).

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BROWNELL, Commissioner, concurring:

Several parties argue that releasing shippers should be permitted to use basis differential pricing unconstrained by the tariff rate. For me, they raise a broader policy issue that I have, for some time, wanted to revisit. In Order 637, the Commission removed the rate ceiling for short-term capacity release transactions for an experimental two-year period ending September 30, 2002. The goal of the experiment was to increase flexibility and competition in the natural gas industry by adding greater efficiency to the secondary market. The data gathered during the experiment indicated some positive results.

Above Cap Releases accounted for up to 6 percent of the released volumes in any particular month with the highest volumes occurring during peak periods. Based on this information, the removal of the rate cap in the capacity release market did increase available peak capacity and facilitate the movement of capacity into the hands of those that value it most highly. Further, Above Cap Releases accounted for only 2 percent of the total number of capacity releases and 2 percent of the total capacity release gas volumes. This information illustrates an uncapped capacity release market that is competitive, resulting in just and reasonable rates for customers. Finally, of the thirty-four pipelines, seventy-six percent of Above Cap Releases occurred on four pipelines. This information is an important economic indicator of capacity need because, without the rate cap waiver, this capacity would have likely been sold in the "grey" market. Transparency in capacity pricing will facilitate infrastructure development and supply portfolio management.

I believe it is time to again consider a wide range of proposals for pricing transportation services in the secondary market, as well as competing IT services, in a generic proceeding. For these reasons, I concur with today's order.

Nora Mead Brownell
Commissioner